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[ARCHIVED] Fremont Establishes a Temporary Limit of 15% on Fees Charged by Third-party Food Delivery Companies



The City of Fremont has issued [Executive Order, "EO 2020-07,"](#) establishing a temporary limit of 15% on fees charged to restaurants by third-party food delivery companies to support restaurants in Fremont during the COVID-19 pandemic. The Statewide Shelter-in-Place Order has placed a sudden and severe financial strain on local restaurants, particularly those that already operate on thin margins, contributing to financial pressures in the industry that predate this global pandemic. On July 13, 2020, the Statewide Public Health Officer issued an updated order further restricting dining activities in many counties throughout the state, to include Alameda County. On Tuesday, July 21, 2020, the Fremont City Council directed City Manager Mark Danaj to issue an emergency executive order to assist local businesses by capping fees delivery service providers can charge qualifying restaurants.

Takeout and delivery orders are currently one of the primary sources of revenue for restaurants and are vital to their business during this crisis. Many consumers are using third-party mobile delivery applications and websites more frequently during the stay-at-home order for delivery and takeout restaurant orders. Third-party companies that provide mobile delivery services charge participating restaurants a series of fees, which can range from 10% to 30% of the purchase price in total per order. Restaurants have limited bargaining power to negotiate lower fees with third-party platforms and capping the per-order fees at 15% will ease the financial burden on struggling restaurants during this emergency while not overly burdening third-party platforms. State anti-gouging laws do not provide any protections in the market for food delivery services.

It is also unclear how quickly restaurants will be able to rebound from the COVID-19 pandemic due to many uncertainties, including lower service capacity, new safety and sanitation requirements, and how quickly patrons will return to restaurant dining. Additionally, if food providers begin to close as a result of high fees, restaurant workers will lose employment, thereby affecting their ability to provide for their families. It is anticipated restaurants will continue to see a significant loss of revenue for an ongoing period of time.

"Businesses are hurting across the country. Fremont is issuing these regulations on third-party delivery service providers to help our city's small businesses during COVID-19," said City Manager Mark Danaj. "These fees often have a disparate impact on restaurants, most notably those which are small and independent. This is a temporary

measure which will be in effect through the duration of the local emergency, and we hope it will provide much needed relief to our local businesses.”

As stated in the [Executive Order](#), the new regulations are effective immediately and apply to all third-party food delivery service providers that offer or arrange the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from restaurants offering online orders over the internet within the city of Fremont. Specific regulations in the Executive Order include, but are not limited to:

- Third-Party Food Delivery Service shall not charge a restaurant a fee for the use of its services that totals more than 15% of the purchase price of such online order.
- Purchase price means the menu price of an online order. Such term therefore excludes taxes, gratuities, and any other fees that may make up the total cost to the customer of an online order.
- Each receipt generated by the Third-Party Food Delivery Service for either the customer or the Covered Establishment shall clearly state the fees charged, the gratuities paid, and any discounts offered by the restaurant.
- The City will provide a grace period between July 23, 2020 and July 31, 2020, provided the Third-Party Food Delivery Service refunds the portion of the fee that exceeds 15% of the purchase price to the restaurant prior August 7, 2020.
- This order shall terminate automatically on the date that the Fremont City Council terminates the local emergency related to COVID-19. The restoration of dine-in restaurant service does not terminate this order.